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MINUTES
FRIDAY – JULY 30, 2004

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:03 a.m., on Friday, July 30, 2004, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Ward Shanahan, Dr. Garon Smith, Russell Hudson, David Fishbaugh, and Kim Lacey

Board Members Absent: Susan Brooke

Board Attorney Present: Tom Bowe, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Debbie Eickhoff, Lesofski & Walstad Court Reporting

Department Personnel Present: Jan Sensibaugh, Director; Tom Livers, Deputy Director; Lisa Peterson, Director's Office (DIR); Jamesa Dodd, DIR; John North, Legal, DIR; Norm Mullen, Legal, DIR; Steve Welch, Permitting & Compliance Division (PCD); Tom Reid, Water Protection Bureau, PCD; Ed Thamke, Waste & Underground Tank Management Bureau (WUTMB), PCD; Bill Rule, WUTMB, PCD; Rick Thompson, WUTMB, PCD; John Arrigo, Enforcement Division; Art Compton, Planning, Prevention & Assistance Division (PPAD); Christian Levine, Water Quality Planning Bureau (WQPB), PPAD; Robert Bukantis, WQPB, PPAD; David Bowers, Hazardous Waste Site Cleanup Bureau, Remediation Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Don Allen, Western Environmental Trade Association; Doug Dodge, Town Pump, Inc.

- I.A.1 | Review and approve minutes of the June 4, 2004 meeting
- Dr. Smith noted a missing space between two words in paragraph 5 on page 7.
- Mr. Hudson MOVED that the June 4, 2004, meeting minutes be approved with the correction noted. Dr. Smith SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- II.A.1.a | In the matter of the appeal of a Notice of Violation and Penalty Order by MNLC, Inc., at Cam-Am Convenience Store, BER 2004-03 UST.
- Mr. Bowe said he had received a message from Kelly O'Sullivan stating that she did not have any updates to this case.
- II.A.2.a | In the matter of the request for hearing by Jim and Glenda Anderson regarding the Christiansen Pit, BER 2004-10 OC.
- Mr. Bowe said the attorneys for the parties requested that the schedule be modified, in part to accommodate an expert witness. He said the hearing is scheduled for October 18, 2004, and is expected to last two days.
- II.A.2.b | In the matter of the request for review of a Notice of Violation and Administrative Penalty Order by Kernaghan's Service, Inc. at Meadow Lark Country Club, BER 2004-11 UST.
- Mr. Bowe said the parties had submitted a stipulation to dismiss and he expected to present it to the Board for approval at the October Board meeting.
- II.A.2.c | In the matter of M&W Investments, Inc.'s appeal of two subdivision application non-degradation decisions and a deviation request denial, EQ #01-1457 and #00-1822.
- Mr. Bowe had no further updates beyond what was included in the agenda.
- The Board engaged discussion concerning the length of the water quality monitoring. Mr. Bowe said an attorney had appeared for M&W recently and had begun taking some actions in the case. He said a prehearing conference is expected in late October.
- II.A.2.d | In the matter of the request for hearing by CR Kendall Corporation, BER 2002-09 MM.
- Mr. Bowe had nothing further to add to the information provided in the agenda.
- II.A.2.e | In the matter of Flying J Petroleums, Inc. Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01, BER 2003-14 HW.

- Mr. Bowe said there appeared to be many issues in this case. He said the parties have stipulated to a stay in the case until September 13, 2004, while they try to resolve some of the issues.
- II.A.2.f In the matter of the appeal filed by IIC, Inc. concerning a Notice of Violation and Administrative Penalty Order, BER 2004-01 ASB.
- Mr. Bowe said the parties had agreed to an Administrative Order on Consent and that if payments were made accordingly, the case should be before the Board for dismissal later this year.
- II.A.2.g In the matter of the appeal of an Administrative Compliance and Penalty Order by Golden Jubilee Mining, Inc., BER 2004-02 WQ.
- Mr. Bowe said the parties had signed a stipulation to settle the case, but the Board had not received notice that payment of fees and penalties had been made.
- II.A.2.h In the matter of the appeal of a Notice of Violation, Administrative Penalty Order, and Order to Take Corrective Action by Big Sky Truck Stop, BER 2004-07 UST.
- Mr. Bowe explained that there was an extended payment schedule in this case.
- II.B In the matter of the Board's July 29, 2004, Upper Blackfoot Mining Complex Tour.
- Mr. Livers explained that this time had been scheduled for the Board to discuss the tour of the previous and make comments or ask questions if they wanted. He said DEQ staff was available to answer questions if there were any.
- Mr. Shanahan initiated discussion regarding the dam and whether a decision had been made on the removal of it. Mr. Hudson said it had not been designed as a dam in the beginning and referred to it as a "mine dump." He said there was water leaking under it because it was not sealed to anything. Mr. Hudson suggested another alternative would be to run the stream around the dam and leave the dam in place.
- Mr. Livers explained that no decision had been reached to remove the dam. He explained that the option to remove it was one of many that will be looked at in the second Forest Service ECA.
- Mr. Bowers said there were many issues with the dam, that the integrity of the dam was suspect, and that the dam is located on a seismically active area. He said the issue was not only a matter of a spillway.
- Chairman Russell said the water coming out the dam, though not good, was not as bad as the water going into the treatment cells from the upper adit and the Anaconda adit. He inquired about a potential gold mine east of Lincoln, which was

mentioned in a newspaper.

Director Sensibaugh confirmed that it was the McDonald Gold Project and that it was closer to Lincoln.

Ms. Lacey said the tour was very beneficial; other Board members agreed. Further discussion took place regarding ASARCO and its financial situation, the treatment system, and the acid mine drainage.

Mr. Bowers explained that the seeps down below the Mike Horse pretreatment area were not related to the adit water.

II.A.1 In the matter of the amendment of the Solid Waste Fee Rules at ARM 17.50.400.

Mr. Livers reminded the Board that this was the correction of a minor mistake that could have significant consequences.

Chairman Russell confirmed with Mr. Bowe that the Administrative Procedure Act had been followed. He called for public comment; there was no response. Chairman Russell called for a motion to authorize him to sign the Notice of Amendment. Ms. Lacey so MOVED. Mr. Shanahan SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.1 In the matter of the request for hearing of Four Corners Community Foundation on the amendment of Permit No. SIM-001 issued to Dennis Simpson, BER 2003-15 OC.

Mr. Bowe explained that this was a routine approval for the Board.

Chairman Russell called for a motion to authorize him to sign the order to dismiss the case without prejudice. Mr. Shanahan so MOVED. Mr. Fishbaugh SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.2 In the matter of violations of the Montana Underground Storage Tank Act at the Billings West Dial Exchange Building by Qwest Corporation, BER 2004-09 UST.

Mr. Bowe said the packet included documents that indicated that the parties had reached a stipulation and that payment had been made in accordance with the stipulation. He said an order of dismissal for the Chairman to sign was also included.

Chairman Russell called for a motion to authorize him to sign the order of dismissal. Mr. Hudson so MOVED. Dr. Smith SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.3 In the matter of violations of the Montana Underground Storage Tank Act at Highwood Service Center, BER 2004-06 UST.

Mr. Bowe said that documents included in the file show that there was a settlement with an administrative penalty and a letter indicating that the agreed payment had been received by DEQ. He said the letter from DEQ cited the case number as 2004-07, but that the correct case number was 2004-06. He said an order of dismissal with the correct case number was included in the Board packets.

Chairman Russell called for a motion to authorize him to sign the order of dismissal for Case No. BER 2004-06 UST. Mr. Hudson so MOVED. Mr. Shanahan SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.4 In the matter of violations of the Montana Underground Storage Tank Act by Meadow Lark Country Club, BER 2004-12 UST.

Mr. Bowe said he had recommended dismissal of the case in accordance with a motion filed by DEQ. He said the Board packets included the motion and the paperwork showing that Meadow Lark Country Club did not file the appeal in a timely manner. He said Meadow Lark also had failed to respond to his proposed decision.

Discussion took place regarding the appeal process in this case and the lack of response on Meadow Lark's part.

Mr. Shanahan MOVED to authorize Chairman Russell to sign the order of dismissal with prejudice. Mr. Hudson SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.1 In the matter of the request for hearing of Lang Creek Brewery regarding an Administrative Compliance and Penalty Order, BER 2004-13 WQ.

Mr. Bowe said he had issued an order and that the parties responded with a request to stay everything for three months while they try to work out a settlement. Mr. Bowe granted the request. Mr. Bowe said it would be appropriate for the Board to appoint him as the hearing examiner in this case.

Mr. Shanahan MOVED to appoint Mr. Bowe as the permanent hearing examiner for this case. Mr. Hudson SECONDED the motion. The motion CARRIED with a unanimous VOTE.

IV. General Public Comment

Chairman Russell opened the floor for general public comment. There were no members of the public present at this time.

Mr. Livers explained to the Board that the brief agenda was due to three rulemakings that had been delayed for various reasons. He said those rules would be on the October agenda.

Mr. Bowe indicated that he had drafted presiding officer reports on three Board rulemakings. He said he believed those would be up for adoption at the October meeting.

Discussion took place regarding a coal plant outside of Great Falls, the quick load-out facility at Pompey's Pillar, the Rock Creek Project, the Troy Mine, and the Gallatin Outstanding Resource Water EIS.

V. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Fishbaugh so MOVED. Ms. Lacey SECONDED the motion. The meeting adjourned at 9:57 a.m.

Board of Environmental Review July 30, 2004, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE